

U.S. Department of State



2021 Plan to Implement Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Overview

On January 26, 2021, the President signed the Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships directing the head of each agency to develop a detailed plan of action to implement Executive Order 13175 Consultation and Coordination with Indian Tribal Governments. E.O. 13175 calls for regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.

The Secretary of State honors the principles of tribal sovereignty and self-determination. The Secretary is joined by all Department of State bureaus in the commitment to carry out the goals and the spirit of the Executive Order.

In the development of this plan, all relevant bureaus provided input regarding the issues where consultation and coordination between the Department of State and Tribal Governments are likely to occur. Subsequently, Federally Recognized Indian Tribes were contacted and invited to contribute suggestions for this plan, virtually and in writing. Those suggestions were taken into appropriate consideration in the development of this plan, and we will continue to update the plan as new suggestions are received and/or circumstances dictate.

The Secretary of State designated the Deputy Secretary for Management and Resources as the Department official with principal responsibility for the Department's implementation of E.O. 13175, in accordance with Section 5(a) of E.O. 13175 and the responsible official for maintaining the plan of action to implement E.O. 13175, as called for in Section 1(b) of the January 26, 2021, Memorandum. All relevant bureaus and offices will continue to support the Deputy Secretary for Management and Resources in achieving the goals of the President's memorandum.

The Department will provide a progress report on the status of actions included in this plan with any proposed updates to the Office of Management and Budget within 270 days of the Presidential Memorandum and in annual reports thereafter.

Department of State Tribal Consultation Policy and Plan Concerning Tribal Consultations Under E.O. 13175

I. PREAMBLE

This Notice describes the U.S. Department of State's ("Department") Tribal Consultation Policy ("Policy") and seeks to further the Department's efforts to engage with federally recognized Indian tribes ("Indian tribes"). This Policy serves to further the Department's practice under Executive Order ("E.O.") 13175 and takes into consideration relevant Federal policy, treaties, statutes, memoranda, court decisions, and Executive Orders. In the Department's experience, early and ongoing consultation with Tribal Governments about relevant Department policies can be beneficial to the decision-making process and helps contribute to better and more effective policies. The Department intends to hold tribal consultations from time to time on the implementation of this Policy and to make any needed revisions on an ongoing basis.

This Policy is intended to provide general guidance to Department bureaus and other components on policies with tribal implications. As relevant, Department personnel will consider the unique qualities of individual tribal governments when applying this Policy.

This Policy is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor may this Policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights. This Policy is not intended to, and does not, limit or otherwise impact the foreign affairs authority of the Department of State. It is to be applied to the extent permitted by law and does not supersede laws with more specific or different requirements concerning tribal consultation.

II. INTRODUCTION

- A. The U.S. government has a unique legal and political relationship with federally recognized Indian tribes as set forth in the Constitution of the United States, treaties, statutes, court decisions, executive orders, and memoranda. Indian tribes exercise inherent sovereign powers over their members and territories.

- B. The Department is committed to strengthening government-to-government relationships between the United States and Tribal Governments. The Department recognizes its policies may directly or indirectly affect Indian tribes and their members and is committed to regularly and meaningfully collaborating, communicating, and cooperating with Tribal Governments.
- C. The Department respects the commitments made by the United States with regard to the United Nations Declaration on the Rights of Indigenous Peoples (“UN Declaration”) in 2010, as explained in the Announcement of U.S. Support for the UN Declaration of December 2010, *reprinted* in Elizabeth R. Wilcox (ed.), *Digest of United States Practice in International Law 2010* (2011), p. 262 et seq. (“2010 Announcement”), including commitments related to consultation.
- D. This Policy is in accordance with E.O. 13175 and takes into account relevant treaties, statutes, memoranda, court decisions, and executive orders. The Policy outlines certain guiding principles for Department engagement with Indian tribes. This Policy is intended to be updated and refined, as necessary, to reflect the Department’s ongoing engagement and collaboration with tribes.

III. DEFINITIONS

- A. “Communication” refers to the verbal, electronic, or written exchange of information between the Department and federally recognized Tribal Governments.
- B. “Consultation” refers to the process described in Section 5 of E.O. 13175.
- C. “Exigent situation” refers to an unforeseen combination of circumstances or the resulting state that calls for immediate action in order to enforce or uphold the law, provide for the national defense, or preserve life, health, national security, national resources, tribal resources, property, rights, or interests.
- D. “Indian tribe” has the definition contained in Section 1(b) of E.O. 13175.
- E. “Tribal Government” refers to the recognized governing body of a federally recognized Indian Tribe listed by the Bureau of Indian Affairs of the U.S. Department of the Interior in its notice published on January 29 at

86 FR 7554, and in any subsequent updated list published in the *Federal Register*.

- F. “Tribal official” has the definition contained in Section 1(d) of E.O. 13175.
- G. “Policies that have tribal implications” has the definition contained in Section 1(a) of E.O. 13175 and “tribal implications” are those implications described in Section 1(a) of E.O. 13175.

IV. GOVERNMENT-TO-GOVERNMENT RELATIONS

The Department intends to continue to build stable and enduring relationships with Indian tribes by:

- A. Meaningfully consulting with Indian tribes in the development of regulatory policies that have tribal implications, as described in Section 5(a) of E.O. 13175, and taking the information exchanged during these consultations into appropriate consideration during the decision-making process.
- B. Meaningfully consulting where appropriate with Indian tribes on other proposed or anticipated Department policies that have tribal implications, and taking the information exchanged during these consultations into appropriate consideration during the decision-making process.
- C. Engaging in such consultations on a government-to-government basis, in recognition of the tribes’ status as separate sovereigns; recognizing the diversity of Tribal Nations; and honoring the unique legal and political relationship as defined in the Constitution of the United States, treaties, statutes, court decisions, executive orders, and executive memoranda.
- D. Identifying liaisons within the Department so that tribal inquiries may be channeled to appropriate officials.
- E. Working with other federal agencies, in consultation with Indian tribes, to more efficiently address duplicative requests for information from Indian tribes.

V. CONSULTATION WITH TRIBAL GOVERNMENTS

The Department intends to be guided by the following general principles in its tribal engagement. The specific manner in which the Department and Indian tribes engage in consultation should be flexible, in recognition of the wide range of relevant issues that may be appropriate for such consultation. For example, consultation may warrant in-person meetings, virtual meetings, conference calls, or other mechanisms as determined by the Department to better foster productive communication. The Department intends to consult meaningfully with Indian tribes by:

- A. Affirming the Department's commitment, to the extent permitted by law, to engage in consultation with affected Tribal Governments in the development of regulatory policies that have tribal implications; and to engage in consultation with affected Tribal Governments as appropriate on other Department policies that have tribal implications.
- B. Notifying appropriate Tribal Governments of the Department's desire to engage in consultation in a timely manner. Notice should be given as early in the decision-making process as possible, preferably in writing, and with sufficient detail about the proposed actions or policies that have tribal implications.
- C. Actively soliciting input from Tribal Governments the Department has identified as likely to be directly affected by the proposed policy, taking into account the scope of the policy in question, the timeline for decision-making, and any other relevant criteria.
- D. Maintaining effective and respectful communication on an ongoing basis as appropriate; promoting coordination and cooperation with Indian tribes; and consulting in good faith.
- E. Seriously considering input received from the Tribal Governments in the Department's decision-making process.
- F. Acknowledging that tribal consultation can be requested by the Department or by a Tribal Government.

- G. Maintaining, to the extent permitted by relevant authorities and procedures, transparency and accountability throughout the consultation process.
- H. Engaging in tribal consultation in a manner that exhibits, to the greatest extent practicable, and to the extent permitted by law, sensitivity to and respect for tribal confidentiality concerns regarding cultural, religious, political, and other intra-tribal affairs.
- I. Following, to the greatest extent practicable, the consultation procedures outlined in Section VI below.
- J. Emphasizing the Department-wide commitment to fully engage in tribal consultation in accordance with other Department policies.
- K. As noted in Section II(C), being mindful of relevant commitments to respect and promote the rights of indigenous peoples, as reflected in the UN Declaration and explained in the 2010 Announcement.

VI. THE CONSULTATION PROCESS

Consultation between the Department and Tribal Governments will generally consist of four phases: Identification, Notification, Input, and Follow-up.

A. Identification Phase:

1. Relevant Department bureaus and offices will consider whether proposed regulatory policies could have tribal implications and assess whether consultation is necessary under E.O. 13175, Section 5(a). For policies other than regulatory policies that may have tribal implications, relevant Department bureaus and offices will also consider whether consultation is appropriate under the circumstances.
2. This identification phase will include a determination of the complexity of the actions contemplated by the policy, the potential implications for Indian tribes, and any time or resource constraints relevant to the consultation process. For activities that may affect only certain Indian tribes, this phase will also include an initial identification of the potentially affected Indian tribe or tribes. If there is a reasonable possibility of tribal implications, the bureau or office

in question will, to the greatest extent practicable, subject to exigent situations and to the extent permitted by law, engage in tribal consultation.

3. Tribal officials may also request consultation through an appropriate Department official. The Department will give serious consideration to the Tribal Government's request, taking into account the nature of the activity, any past consultations with the Indian tribe on the same matter, available resources, timing considerations, and other relevant factors.

4. Beyond regulatory policies with tribal implications, the following is an illustrative list of Department activities that may be appropriate for consultation if they have tribal implications:

- Department involvement in international conferences, delegations, meetings, summits, assemblies, and projects that focus on indigenous peoples as a whole; indigenous women and girls; indigenous youth or children; the human rights of indigenous individuals; economic development relevant to indigenous peoples or individuals; repatriation of ancestral remains and sacred and culturally significant items;
- Department policies related to transboundary water or other resource issues that have tribal implications; and
- Department activities in implementation of U.S. obligations under an international agreement that have tribal implications.

B. Notification Phase: The Department will notify Indian tribes of proposed regulatory policies that have tribal implications and of other policies that have tribal implications that the Department determines are appropriate for consultation, and ensure affected Indian tribes are adequately informed about the consultation process so they have the opportunity to participate in a consultation meeting or otherwise provide timely and meaningful input.

1. Notification may occur in a number of ways depending on the nature of the policy or activity and the number of Indian tribes potentially affected. For example, the Department may contact Tribal

Governments by letter, email, or telephone, may publish a *Federal Register* notice, or may provide notice through other reasonably effective means.

2. Notification will, to the extent permitted by Department authorities and procedures, include the information necessary for tribal officials to make an informed decision about whether to participate in a consultation meeting and how otherwise to provide input.

3. Notification will, to the greatest extent possible, occur sufficiently early in the process to give Indian tribes time to meaningfully identify and evaluate the tribal implications of proposed policy and participate in a consultation meeting or otherwise provide input that may be considered prior to the Department's deciding whether, how, or when to act on the matter under consideration.

C. Input Phase: Indian tribes may provide input to the Department on the consultation matter.

1. There is no single formula for what constitutes appropriate consultation, and the analysis, planning, and implementation of consultation will consider all aspects of the policy under consideration. The Department's consultation processes may include one or more of the following: written and oral communications; phone calls; conference calls; in-person meetings in Washington, D.C., and elsewhere; communications in conjunction with regional, national, and international conferences and other events; and other appropriate interactions depending upon the specific circumstances involved.

2. The Department will coordinate with tribal officials during this phase to respond to requests for information and to provide opportunities to give, receive, and discuss tribal input. Regardless of the format or the duration of the consultation process, the Department will seek to ensure that Indian tribes are adequately informed about the consultation process, that they are aware of the various ways consultation can be conducted, and they have the opportunity to suggest consultation procedures that accommodate their needs so they have the opportunity to provide timely and meaningful input on Department policies with tribal implications.

3. When consulting with tribes to determine whether culturally sensitive locations may be affected by Department actions, the Department will consider tribal desires to keep information about such locations confidential and will endeavor to obtain and record information about such sites only in the detail necessary to support administrative decisions. Similarly, when consulting with tribes regarding trafficking or repatriation of ancestral remains and sacred and culturally significant items, the Department will consider tribal desires to keep information about beliefs and practices related to those items confidential. Those engaged in consultations should be aware that Department records are subject to laws and regulations governing preservation and public disclosure. However, certain information, such as confidential commercial or financial information, and information about the nature and location of certain archaeological sites and cultural or historic resources, may be exempt from disclosure under the Freedom of Information Act.

4. The Department will give due consideration to any requests by Indian tribes for federal technical experts to meet with tribal representatives.

5. The Department may need to undertake subsequent rounds of consultation if there are significant changes in the originally proposed policy, as new issues arise, or as may otherwise be appropriate.

6. Ultimately, the consultation process will involve an informed discussion of the proposed Department policy and associated tribal concerns.

D. Follow-up Phase: The Department will endeavor, as appropriate, to provide feedback and responses to Indian tribes who participated in the consultation and to respond, as appropriate, to points raised by tribes to the extent they were not responded to during the consultation.

VII. IMPLEMENTATION OF THE CONSULTATION POLICY

A. Principal Responsibility for the Department's Implementation of E.O. 13175: In accordance with Section 5(a) of E.O. 13175, the Deputy Secretary of State for Management and Resources is the Department

official with principal responsibility for the Department's implementation of E.O. 13175. Among his responsibilities is submitting information about this Policy and its implementation to the Office of Management and Budget as required or as appropriate. In support of these responsibilities, the Department will establish a dedicated portal for communications with Tribal Nations. Such a portal can help ensure relevant policies are transparent and available to interested parties.

B. Day-to-day Implementation of this Policy: Although the Deputy Secretary for Management and Resources has ultimate responsibility for coordinating implementation of this Policy, day-to-day implementation rests with the particular Department bureau, office, or staff primarily responsible for the proposed Department policy in question, or jointly between two or more such entities if they share primary responsibility. Each such bureau, office, staff, post, or mission should designate a point of contact once it is determined that a proposed policy or activity is appropriate for consultation.

C. Working Group: Any bureau, office, or staff may convene a working group comprised of Department employees from across relevant bureaus, offices, posts, and missions, and of employees from other federal agencies as appropriate, in order to plan, coordinate, and follow up on a consultation.

VIII. INAPPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT

The provisions of the Federal Advisory Committee Act, P. L. 92-463, 5 U.S.C. App. 1-16 ("FACA") do not apply to consultations under this Policy. In accordance with Section 204(b) of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, FACA is not applicable to consultations between the federal government and elected officers of Tribal Governments (or their designated employees with authority to act on their behalf).

IX. FINAL PROVISIONS

- A. The Department intends to review this Policy from time to time, in consultation with Tribal Governments, in order to make any revisions as may be necessary.
- B. The Department has submitted this Policy to the Office of Management and Budget under Section 5 of E.O. 13175.

**APPENDIX A: Memorandum on Tribal Consultation and Strengthening
Nation-to-Nation Relationships**

January 26, 2021

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND
AGENCIES

SUBJECT: Tribal Consultation and Strengthening Nation-to-Nation
Relationships

American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change — all of which disproportionately harm Native Americans. History demonstrates that we best serve Native American people when Tribal Governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.

To this end, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribal Nations. The Presidential Memorandum of November 5, 2009 (Tribal Consultation), requires each agency to prepare and periodically update a detailed plan of action to implement the policies and directives of Executive Order 13175. This memorandum reaffirms the policy announced in that memorandum.

Section 1. Consultation. My Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal Government has much to learn from Tribal Nations and strong communication is fundamental to a constructive relationship. Accordingly, I hereby direct as follows:

- (a) The head of each agency shall submit to the Director of the Office of Management and Budget (OMB), within 90 days of the date of this

memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. The plan shall be developed after consultation by the agency with Tribal Nations and Tribal officials as defined in Executive Order 13175.

- (b) Each agency's plan and subsequent reports shall designate an appropriate agency official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. These officials shall submit reports to the Assistant to the President for Domestic Policy (APDP) and the Director of OMB, who will review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.
- (c) The head of each agency shall submit to the Director of OMB, within 270 days of the date of this memorandum, and annually thereafter, a progress report on the status of each action included in the agency's plan, together with any proposed updates to its plan.
- (d) The Director of OMB, in coordination with the APDP, shall submit to the President, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the Tribal consultation process more effective, if any, should be included in this report.

Sec. 2. Definitions. The terms "Tribal officials," "policies that have Tribal implications," and "agency" as used in this memorandum are as defined in Executive Order 13175.

Sec. 3. General Provisions.

- (e) Nothing in this memorandum shall be construed to impair or otherwise affect:
 - (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (f) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (g) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 4. Publication. The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

APPENDIX B: Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

- (a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.
- (b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- (c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).
- (d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

- (a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous

statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

- (b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.
- (c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

- (a) Agencies shall respect Indian tribal self- government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.
- (b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.
- (c) When undertaking to formulate and implement policies that have tribal implications, agencies shall: (1) encourage Indian tribes to develop their own policies to achieve program objectives; (2) where possible, defer to Indian tribes to establish standards; and (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation.

- (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that

have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

- (b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless: (1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or (2) the agency, prior to the formal promulgation of the regulation,
 - (A) consulted with tribal officials early in the process of developing the proposed regulation;
 - (B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
 - (C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- (c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation, (1) consulted with tribal officials early in the process of developing the proposed regulation; (2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and (3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- (d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where

appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

- (a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
- (b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- (c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.
- (d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

- (a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
- (b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.
- (c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions.

- (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.
- (b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).
- (c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.
- (d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.